

therefore, the party failing in the suit must be treated as liable to costs, whether he be beneficially interested or is acting only in a fiduciary capacity; or whether the recovery against him be as large as claimed, or reduced by his partially successful defence.

In *Dorsey v. Smith*, 7 H. & J. 345, each party being in default in some respects was ordered to pay his own costs in the Court of Chancery. In *Bosley v. McKim*, *ibid.* 468, the bill of a party having a naked legal right only was dismissed without costs, though the Court decided that the plaintiff below had *no equity*, and Dorsey J. animadverted in strong terms upon the nature of the bill. In *Lee v. Pindle*, 12 G. & J. 288, costs had been charged on the fund by a decree, but afterwards the defendant, an executor, having taken unwarrantable and vexatious grounds of defence, he was held well charged with costs in the final decree. But a decree against an executor acting in the proper discharge of his office, is ordinarily without costs, *Linthicum v. Linthicum*, 2 Md. Ch. Dec. 21. In a creditor's suit costs are always first paid, but costs incurred in contesting a particular claim are not to be taxed to the prejudice of other claims, *Hammond v. Hammond*, 2 Bl. 388. And a mortgagee, unless guilty of positive misconduct, *Detil- lin v. Gale*, 7 Ves. Jun. 583, and other cases, when he may even be made to pay costs, as if he refuse a tender of principal and interest due, or if the mortgage debt was paid at the time of bill filed or on previous demand, and the mortgagee has retained balances, *Rayner v. Bryson*, 29 Md. 473, is of course entitled to his costs whether on redemption, or foreclosure, or sale, and a mortgagor in all such cases must pay the costs of the mortgagee, and the costs of all claiming under him, and all costs and expenses he may have incurred in asserting or defending his right under the mortgage, *Wetherell v. Collins*, 3 Md. 255; *Bartle v. Wilkin*, 8 Sim. 238; *Hunt v. Fownes*, 9 Ves. Jun. 70; *Godfrey v. Watson*, 3 Atk. 517; *Ellison v. Wright*, 3 Russ. 458.⁶ As to costs in commissions of lunacy, see *Alexander's Chan. Prac.* 236; *Estate of Rachel Colvin*, 4 Md. Ch. Dec. 126. Where the circumstances of a trust are such as to require the direction of a Court of Equity, it is the practice to charge the costs upon the fund, *Chase v. Lock-*

court may award costs in its discretion for or against either party, or may divide them. *Schnepfe v. Schnepfe*, 108 Md. 139.

Where a suit is instituted to recover property on which different parties have liens and the proceeds are not sufficient to pay all the claims in full, the costs of the suit should not be altogether cast on the junior lienors but the prior lienor must contribute to the same in proportion to his claim. *Dickey v. Pocomoke Bank*, 89 Md. 280; *Tome v. King*, 64 Md. 166, 182.

On a bill by vendor of real estate for specific performance where the defense is defective title and the court holds the title good, the vendor is generally awarded the costs. *Posner v. Bay*, 79 Md. 30.

⁶ As to commissions and counsel fees in proceedings to foreclose mortgages, see *Maus v. McKellip*, 38 Md. 231; *Johnson v. Glenn*, 80 Md. 369; *Gaither v. Tolson*, 84 Md. 637; *Dorsey v. Omo*, 93 Md. 74; *O'Sullivan v. Traders Asso.*, 107 Md. 55. See also notes 7 and 8 *infra*.